Tan Sri Datuk Seri M Kayveas & Ors v Datuk Seri Maglin Dennis D'Cruz & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(NCC)(W)-621–04 OF 2022 AND W-02(NCC)(W)-773–04 OF 2022

VAZEER ALAM MYDIN, HADHARIAH SYED ISMAIL AND GUNALAN MUNIANDY JJCA

27 JULY 2023

Civil Procedure — Appeal — Appeal against High Court's decision — Respondents commenced action against appellants for causing shares and property to be unlawfully transferred using consent judgment — Consent judgment alleged to be illegal and abuse of court process — Whether High Court had no jurisdiction to hear, decide and grant various reliefs pursuant to s 18C of Societies Act 1966 — Whether there were conspiracy to injure by unlawful means and abuse of court process

These two appeals ('Appeal 621' and 'Appeal 773') were appeals against the decision of the High Court. An action was commenced by the respondents ('the plaintiffs') against the five appellants ('the first to fifth defendants') in Appeal 621 and the four respondents ('the sixth to ninth defendants') in Appeal 773 for unlawfully causing the shares in Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') and Wisma myPPP which were the property of myPPP to be transferred and registered under the name of the first defendant ie Tan Sri Kayveas ('TSK') and his company, Kayveas Holdings Sdn Bhd ie the second defendant. myPPP was a political party registered under the Societies Act 1966 headquartered at a building known as Wisma myPPP while Bintang Iradat was a company formed as the investment and corporate entity that acted for and on behalf of myPPP. Sometime in 2018, there was a dispute with regard to the office bearers of myPPP. At the material time, there existed two camps within myPPP, namely TSK's camp and the first plaintiff ie Datuk Seri Maglin's ('DSM') camp. TSK's camp held an annual general meeting ('AGM') on 27 May 2018 ('27 May 2018 AGM') while DSM's camp organised an AGM on 26 May 2018. The Registrar of Society ('ROS') rejected the AGM minutes of both camps based on the fact that there was a leadership tussle within myPPP. ROS directed that the matter be resolved failing which, myPPP would have its registration cancelled. Whilst the leadership dispute continued, without the plaintiffs' knowledge, a suit ('Suit 796') was filed by the fourth defendant against the fifth defendant. Both of the parties were part of TSK's camp. As Suit 796 was surreptitiously proceeding, myPPP had its registration cancelled on 14 January 2019. The parties appeared before the High Court for

A Suit 796 and proceeded to record a consent judgment on 16 January 2019. The consent judgment: (a) was relied upon to make 100% changes to the shareholdings, directorship and company secretary of Bintang Iradat; and (b) was utilised to change the structure of Bintang Iradat to ultimately reflect TSK and the second defendant, respectively as the sole director and
B shareholder of Bintang Iradat. On 14 June 2019, the plaintiffs commenced this action and alleged that: (i) the consent judgment was illegal and was an abuse of the court process on the ground the fourth defendant had no authority to initiate Suit 796 on behalf of myPPP as myPPP had its registration cancelled by
C the ROS; and (ii) the filing of Suit 796 and the procuring of the consent judgment were conspirational acts of the first to ninth defendants by unlawful means to deprive the plaintiffs of its property and to cause harm and losses to the plaintiffs. The plaintiffs' claim was premised on two causes of actions, namely tort of conspiracy to injure by unlawful means and tort of abuse of
D court process. The High Court allowed the plaintiffs' claim against the first to fifth defendants but dismissed the claim against the sixth to ninth defendants. Hence, these appeals by both parties ie the plaintiffs in Appeal 773 and the first to fifth defendants in Appeal 621.

E **Held**, dismissing the appeals:

(1) There was no evidence that the ROS recognised the 27 May 2018 AGM as valid. The purported decision made by members of myPPP on 27 May 2018 was not a valid decision enforceable in law. Simply put, there was no decision recognised in law to be questioned by the court. Hence, s 18C of
F the Societies Act 1966 did not apply. Therefore, it was fundamentally wrong for the defendants to still harping on the 27 May 2018 AGM as the basis to invoke s 18C of the Societies Act 1966. The learned High Court judge's decision on the issue of jurisdiction of the court, the plaintiffs' locus standi and ownership of the shares and Wisma myPPP
G was absolutely correct. The learned High Court judge had rightly decided that illegality was proven and held the consent judgment was illegal, unlawful, fraud on the court and must be set aside. With regard to the tort of conspiracy to injure by unlawful means, the learned High Court judge had correctly applied the law. The learned High Court judge
H correctly found that there was an oral agreement between the first, fourth and fifth defendants to cause harm and damage to the plaintiffs. The act and conducts of the first, fourth and fifth defendants had caused losses and damage to the plaintiffs in that the shares and Wisma myPPP which belongs to the political party had been taken away unlawfully by TSK.
I There was no good reason to disturb the finding of fact made by the learned High Court judge that the first, fourth and fifth defendants were the conspirators. Suit 796 and the procurement of the consent judgment was for the purpose of causing harm and losses to myPPP. Suit 796 was an abuse of the court process as it was used to legitimise the unlawful transfer

of shares and Wisma myPPP which belonged to the party. Since it was proven that Suit 796 and the consent judgment obtained therein was an abuse of court process, the learned High Court judge was right in setting aside the consent judgment. Therefore, there was no merit in Appeal 621 (see paras 79, 82, 85–86, 89 & 91–92).

(2) With regards to Appeal 773, the decision of the learned High Court judge to dismiss the plaintiffs' claim against the sixth, seventh, eighth and ninth defendants was on the basis that there was a lack of evidence against them to establish the causes of action. The findings of the learned High Court judge were not plainly wrong for the court to intervene. There were essentially findings of fact and there was no reason to interfere with the findings (see paras 98–99).

[Bahasa Malaysia summary

Kedua-dua rayuan ini ('Rayuan 621' dan 'Rayuan 773') adalah rayuan terhadap keputusan Mahkamah Tinggi. Tindakan telah dimulakan oleh responden ('plaintif') terhadap lima perayu ('defendan pertama hingga kelima') dalam Rayuan 621 dan empat responden ('defendan keenam hingga kesembilan') dalam Rayuan 773 kerana menyebabkan saham dalam Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') dan Wisma myPPP yang merupakan hak milik myPPP untuk dipindahkan dan didaftarkan secara salah di bawah nama defendan pertama iaitu Tan Sri Kayveas ('TSK') dan syarikatnya, Kayveas Holdings Sdn Bhd iaitu defendan kedua. myPPP adalah sebuah parti politik yang didaftarkan di bawah Akta Pertubuhan 1966 yang beribu pejabat di sebuah bangunan dikenali sebagai Wisma myPPP manakala Bintang Iradat ialah sebuah syarikat yang ditubuhkan sebagai entiti pelaburan dan korporat yang bertindak untuk dan bagi pihak myPPP. Pada tahun 2018, terdapat pertikaian mengenai pemegang jawatan myPPP. Pada masa material, terdapat dua kem dalam myPPP, iaitu kem TSK dan kem plaintif pertama iaitu Datuk Seri Maglin ('DSM'). Kem TSK telah mengadakan mesyuarat agung tahunan ('AGM') pada 27 Mei 2018 ('AGM 27 Mei 2018') manakala kem DSM menganjurkan AGM pada 26 Mei 2018. Pendaftar Pertubuhan ('PP') menolak kedua-dua minit AGM kem berdasarkan fakta bahawa terdapat perebutan kepimpinan dalam myPPP. PP mengarahkan perkara itu diselesaikan jika gagal, pendaftaran myPPP akan dibatalkan. Sementara pertikaian kepimpinan berterusan, tanpa pengetahuan plaintif, saman ('Saman 796') telah difailkan oleh defendan keempat terhadap defendan kelima. Kedua-dua pihak adalah sebahagian daripada kem TSK. Ketika Saman 796 sedang berjalan secara rahsia, pendaftaran myPPP telah dibatalkan pada 14 Januari 2019. Pihak-pihak telah hadir di hadapan Mahkamah Tinggi bagi Saman 796 dan terus merekodkan penghakiman persetujuan pada 16 Januari 2019. Penghakiman persetujuan: (a) adalah disandarkan untuk membuat 100% perubahan kepada pegangan saham, jawatan pengarah dan setiausaha syarikat Bintang Iradat; dan (b) telah digunakan untuk mengubah struktur Bintang

Iradat untuk akhirnya mencerminkan TSK dan defendan kedua, masing-masing sebagai pengarah tunggal dan pemegang saham Bintang Iradat. Pada 14 Jun 2019, plaintif memulakan tindakan ini dan mendakwa bahawa: (i) penghakiman persetujuan adalah menyalahi undang-undang dan merupakan penyalahgunaan proses mahkamah atas alasan defendan keempat tidak mempunyai kuasa untuk memulakan Saman 796 bagi pihak myPPP kerana pendaftaran myPPP dibatalkan oleh PP; dan (ii) pemfailan Saman 796 dan perolehan penghakiman persetujuan adalah perbuatan konspirasi defendan pertama hingga kesembilan dengan cara yang menyalahi undang-undang untuk melucutkan harta plaintif dan menyebabkan kemudaratan dan kerugian kepada plaintif. Tuntutan plaintif adalah berdasarkan dua kausa tindakan, iaitu tort konspirasi untuk mencederakan dengan cara yang menyalahi undang-undang dan tort penyalahgunaan proses mahkamah. Mahkamah Tinggi membenarkan tuntutan plaintif terhadap defendan pertama hingga kelima tetapi menolak tuntutan terhadap defendan keenam hingga kesembilan. Oleh itu, rayuan ini oleh kedua-dua pihak iaitu plaintif dalam Rayuan 773 dan defendan pertama hingga kelima dalam Rayuan 621.

Diputuskan, menolak rayuan-rayuan:

(1) Tiada keterangan bahawa PP mengiktiraf AGM 27 Mei 2018 sebagai sah. Keputusan yang dikatakan dibuat oleh ahli myPPP pada 27 Mei 2018 bukanlah keputusan yang sah yang boleh dikuatkuasakan di sisi undang-undang. Secara ringkasnya, tiada keputusan yang diiktiraf dalam undang-undang untuk dipersoalkan oleh mahkamah. Oleh itu, s 18C Akta Pertubuhan 1966 tidak terpakai. Oleh itu, pada asasnya adalah salah bagi defendan untuk masih menyuarakan pada AGM 27 Mei 2018 sebagai asas untuk memohon s 18C Akta Pertubuhan 1966. Keputusan hakim Mahkamah Tinggi yang bijaksana mengenai isu bidang kuasa mahkamah, locus standi plaintif dan pemilikan saham dan Wisma myPPP adalah betul sama sekali. Hakim Mahkamah Tinggi yang bijaksana telah membuat keputusan yang betul bahawa kesalahan undang-undang telah dibuktikan dan memutuskan penghakiman persetujuan adalah menyalahi undang-undang, haram, penipuan di mahkamah dan mesti diketepikan. Berkenaan dengan tort konspirasi untuk mencederakan dengan cara yang menyalahi undang-undang, hakim Mahkamah Tinggi yang bijaksana telah menggunakan undang-undang dengan betul. Hakim Mahkamah Tinggi yang bijaksana dengan betul mendapati bahawa terdapat perjanjian lisan antara defendan pertama, keempat dan kelima untuk menyebabkan kemudaratan dan kerosakan kepada plaintif. Perbuatan dan kelakuan defendan pertama, keempat dan kelima telah menyebabkan kerugian dan kerosakan kepada plaintif kerana saham dan Wisma myPPP milik parti politik itu telah diambil secara tidak sah oleh TSK. Tidak ada sebab

kukuh untuk mengganggu penemuan fakta yang dibuat oleh hakim Mahkamah Tinggi yang bijaksana bahawa defendan pertama, keempat dan kelima adalah berpakat. Saman 796 dan perolehan penghakiman persetujuan adalah untuk tujuan menyebabkan kemudaratan dan kerugian kepada myPPP. Saman 796 adalah penyalahgunaan proses mahkamah kerana ia digunakan untuk mengesahkan pemindahan saham dan Wisma myPPP yang menyalahi undang-undang milik parti itu. Oleh kerana terbukti bahawa Saman 796 dan penghakiman persetujuan yang diperolehi adalah penyalahgunaan proses mahkamah, hakim Mahkamah Tinggi yang bijaksana adalah betul dalam mengetepikan penghakiman persetujuan. Oleh itu, tiada merit dalam Rayuan 621 (lihat perenggan 79, 82, 85–86, 89 & 91–92).

(2) Berkenaan dengan Rayuan 773, keputusan hakim Mahkamah Tinggi yang bijaksana untuk menolak tuntutan plaintif terhadap defendan keenam, ketujuh, kelapan dan kesembilan adalah atas dasar bahawa terdapat kekurangan keterangan terhadap mereka untuk membuktikan kausa tindakan. Penemuan hakim Mahkamah Tinggi yang bijaksana jelas tidak salah untuk mahkamah campur tangan. Pada asasnya terdapat penemuan fakta dan tiada sebab untuk mengganggu penemuan (lihat perenggan 98–99).]

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637; [1999] 4 CLJ 533, CA (refd)

Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94, FC (refd)

Kuwait Oil Tanker Co SAK and another v Al Bader and others [2000] 2 All ER (Comm) 271, CA (refd)

Kwan Ngen Wah & Ors v Hiew Kon Fah & Ors and other appeals [2019] MLJU 226, CA (refd)

Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener) [2003] 3 MLJ 449; [2003] 3 CLJ 404, CA (refd)

Pendaftar Pertubuhan v Datuk Justin Jinggut [2013] 3 MLJ 16; [2013] 2 CLJ 362, FC (refd)

Legislation referred to

Societies Act 1966 ss 17, 17(1)(a), 18C

Appeal from: *Datuk Seri Maglin Dennis D'Cruz & Ors v Tan Sri Datuk Seri M Kayveas & Ors* [2023] 7 MLJ 512 (High Court, Kuala Lumpur)

Ashraf Appoo (with Nurul Azua) (Gunaseharan & Linda) in Civil Appeal No W-02(NCC)(W)-621–04 of 2022 for the appellants.
Gavin Jayapal (with K Thavanesan and Kausalya Munesbaran) (Gavin Jayapal) in Civil Appeal No W-02(NCC)(W)-773–04 of 2022 for the appellants.
Gavin Jayapal (with K Thavanesan and Kausalya Munesbaran) (Gavin Jayapal) in Civil Appeal No W-02(NCC)(W)-621–04 of 2022 for the respondents.
Ashraf Appoo (with Nurul Azua) (Gunaseharan & Linda) in Civil Appeal No W-02(NCC)(W)-773–04 of 2022 for the first, second and third respondents.
Carolyn Cheah (CH Cheah Chambers) in Civil Appeal No W-02(NCC)(W)-773–04 of 2022 for the fourth respondent.

Hadhariah Syed Ismail JCA:

INTRODUCTION

[1] These two related appeals are appeals by both the plaintiffs and the defendants against the decision of the High Court, given on 30 March 2022 allowing the plaintiffs' claim against the first, second, third, fourth and fifth defendants. The High Court dismissed the plaintiffs' claim against the sixth, seventh, eighth and ninth defendants.

[2] The appellants in Appeal 621 are the first, second, third, fourth and fifth defendants in the original suit.

[3] The appellants in Appeal 773 are the plaintiffs and the four respondents are the sixth, seventh, eighth and ninth defendants.

[4] The respondents ('plaintiffs') in Appeal 621 commenced an action against the five appellants and the four respondents in Appeal 773 for unlawfully causing the shares in Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') and Wisma myPPP which were the property of myPPP to be transferred and registered under the name of Tan Sri Kayveas ('the first defendant') and his company, Kayveas Holdings Sdn Bhd ('the second defendant').

[5] The plaintiffs pleaded that the transfer of the shares and the property to the first and second defendants were effected using a consent judgment entered into between the fourth and the fifth defendant in Kuala Lumpur High Court Civil Suit No WA-22NCVC-796–11 of 2018 ('Suit 796') on 16 January 2019. The plaintiffs alleged the said consent judgment was illegal and is an abuse of the court process on the ground the fourth defendant had no authority to initiate Suit 796 on behalf of myPPP as myPPP had its registration cancelled by the Registrar of Society ('ROS') on 14 January 2019 and this fact was never disclosed to the court at the time the consent judgment was recorded.

[6] The plaintiffs also alleged that the filing of Suit 796 and the procuring of the consent judgment were conspirational acts of the first to ninth defendants by unlawful means to deprive the plaintiffs of its property and to cause harm and losses to the plaintiffs.

[7] The plaintiffs claim against the first to ninth defendants for amongst others, various declaratory orders, restoration of the property back to myPPP, exemplary damages and aggravated damages. The plaintiffs' claim is premised on two causes of actions, namely tort of conspiracy to injure by unlawful means and tort of abuse of court process.

[8] Under s 17 of the Societies Act 1966, the assets of myPPP is vested with the Ketua Pengarah Insolvensi after myPPP was cancelled on 14 January 2019. The tenth defendant, Ketua Pengarah Insolvensi is a nominal defendant in the present action.

[9] In this judgment, we shall refer the parties as the plaintiffs and the defendants as they were in the High Court.

myPPP, BINTANG IRADAT AND WISMA myPPP

[10] myPPP was a political party registered under the Act and was a component of the Barisan Nasional. The plaintiffs and the first to nineth defendants (except the second, third and tenth defendants) were, prior to myPPP's cancellation, members of myPPP.

[11] Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') was a company incorporated in the year 2000 and was formed as the investment and corporate entity that acted for and on behalf of myPPP.

[12] From 1998, myPPP was headquartered at a building known as Wisma myPPP located at No 74, Jalan Rotan, Off Jalan Kampung Attap, 50460 Kuala Lumpur ('Wisma myPPP'). Sometime in 2003, when Wisma myPPP was put up for auction, myPPP utilising Bintang Iradat, paid RM267,300 being 10% deposit for the purchase of Wisma myPPP. It is the plaintiffs' pleaded case that the 10% deposit was collected from the members of myPPP.

[13] To finance the balance purchase price of RM2,405,700, Bintang Iradat took a friendly loan from one Chong Chek Ah ('CCA'), a member of myPPP. As security for this friendly loan, the shares in Bintang Iradat which were held by the nominees of myPPP were transferred to CCA to be held in trust for myPPP pending settlement of the friendly loan. At that material time there

were only two shares issued by Bintang Iradat. In breach of the trust, CCA had wrongfully increased the shares capital of Bintang Iradat to 100,000 shares and transferred the shares to his nominees.

[14] In 2010, Tan Sri Kayveas ('TSK') in his capacity as the representative of myPPP initiated Kuala Lumpur High Court Suit No D-22-NCC-1913–2010 ('Suit 2010') against CCA, his nominees and Bintang Iradat to get back the shares. At the material time, TSK was the President of myPPP.

[15] On 27 April 2011, the High Court in Suit 2010, held that the legal owner of Wisma my PPP was Bintang Iradat; the beneficial owner of Wisma myPPP was myPPP; the shares in Bintang Iradat were held on trust by CCA for myPPP. Simply put, the High Court held both the shares in Bintang Iradat and Wisma myPPP were assets belonging to myPPP.

[16] Suit 2010 ended in the Federal Court when the Court of Appeal reversed the High Court's decision. Via Civil Appeal No 02–10–2012 (W), on 15 January 2013, the Federal Court restored the High Court's decision and held that CCA and his nominees held the shares in Bintang Iradat as construstive trustee for and on behalf of myPPP.

[17] Subsequent to the Federal Court's decision, the shares in Bintang Iradat were held by Datuk Seri Maglin ('first plaintiff'), Datuk Mohan ('sixth plaintiff') and Datuk Lau Beng Wei ('ninth defendant') upon the same being vested in them by myPPP. In fact, one of the reliefs prayed for in Suit 2010 is for the shares in Bintang Iradat to be vested with the nominees of myPPP.

[18] The original shareholding structure of the 100,000 shares in Bintang Iradat was as follows:

(a) 70,000 shares were held by Datuk Seri Maglin ('DSM') for and on behalf of myPPP. DSM was also a director of Bintang Iradat;

(b) 15,000 shares were held by Datuk Mohan ('DM'), for and on behalf of myPPP. DM was also a director of Bintang Iradat. DM was the Secretary General of myPPP; and

(c) 15,000 shares were held by Datuk Lau, for and on behalf of myPPP.

[19] The outcome of Suit 2010 established the following facts:

(a) the legal owner of Wisma myPPP was Bintang Iradat;

(b) Bintang Iradat held Wisma myPPP on trust for myPPP;

(c) the shares in Bintang Iradat were also held in trust for myPPP; and

(d) the shareholders and directors in Bintang Iradat were the office bearers of myPPP.

[20] Despite the Federal Court's decision, TSK claimed he purchased Wisma myPPP; he paid the 10% deposit; he took a loan from CCA and therefore, the shares in Bintang Iradat and Wisma myPPP belongs to him, not to myPPP. We find TSK's contention baseless. TSK never brought an action against CCA in his personal capacity. He brought Suit 2010 in his capacity as the representative of myPPP. Likewise, in Suit 796, Chandrakumanan ('fourth defendant') reiterated that myPPP had purchased Wisma myPPP through it's investment company Bintang Iradat.

[21] With the decision of the Federal Court in Civil Appeal No 02–10–2012 (W), the ownership of the shares in Wisma myPPP has been put to rest. TSK is barred by estoppel and res judicata from asserting his ownership over the assets of myPPP.

DISPUTE IN myPPP

[22] Sometime in 2018, there was a dispute with regard to the office bearers of myPPP. The events leading to the disputes in the party started with the 14th General Election ('GE 14') in 2018. TSK who was the President of the Party at the material times had unilaterally given up the pursuit of Parliamentary and State seats for the Party.

[23] myPPP had via a letter dated 15 February 2018 asked for several seats. However, this was reduced to two seats via a letter dated 3 April 2018 and finally, on 9 August 2018, TSK had unilaterally requested for only one seat which he alone sought to contest, namely, the Cameron Highlands constituency.

[24] As a consequence of TSK's aforesaid actions, myPPP's Supreme Council received two letters of complaint by one Datuk Chiw Tiang Chai and one Datuk Inder Singh a/l Beant Singh alleging that TSK's conduct in unilaterally abandoning the seats was contrary to article 9.9.16 of the Party's Constitution.

[25] Datuk Mohan ('DM'), in his capacity as Secretary General of myPPP, also received a letter of complaint dated 24 April 2018 from Barisan Nasional urging myPPP to take disciplinary action.

[26] TSK then issued a letter dated 23 April 2018 to myPPP's Supreme Council, stating he resigned as the President of myPPP, the Chairman of myPPP Wilayah Persekutuan and the Advisor to the Exco of myPPP Perak with immediate effect which myPPP accepted.

[27] Notwithstanding the letter sent by TSK, a Disciplinary Committee was convened on 24 April 2018 and it was determined that TSK would be expelled with immediate effect as President of myPPP and all other positions held in the party including his membership.

[28] Via a letter dated 25 April 2018, the Disciplinary Committee informed TSK of his termination as a member and his expulsion as President of myPPP. In the said letter, TSK was informed that he was not allowed to transfer or dispose all or any assets belonging to the Party.

[29] On or about 30 April 2018, TSK purportedly withdrew his resignation letter. On 1 May 2018, TSK, together with several unknown third parties, then proceeded to enter the premises of Wisma myPPP and forcefully took possession of the same.

[30] The 14th General Election took place on 9 May 2018 and myPPP did not secure any seats.

[31] After the 14th General Election, there was an internal dispute within myPPP as to who were the actual office bearers of myPPP.

[32] At the material time, there existed two camps within myPPP, namely TSK's camp and Datuk Seri Maglin's ('DSM') camp.

[33] The two camps held their respective AGM's. TSK's camp purportedly held a Supreme Council meeting on 25 May 2018. In the said meeting, the Supreme Council had proposed for the following resolution to be tabled at the Party's 65th AGM to be convened on 27 May 2018:

> II. Memindah hakmilik bangunan myPPP kepada pemilik asal (beneficial owner) seperti berikut:
>
> (a) Datuk Mohan Kandasamy be replaced as director by Kumara Raja a/l Arumugam, Datuk Seri Maglin replaced by Shanker Kandasamy to remain as director; and
>
> (b) The shareholding be as follow:

Kumara Raja a/l R Arumugam	—	15%
Shanker Kandasamy	—	70%
Datuk Lau Beng Wei	—	15%

[34] TSK's camp proceeded to hold an Annual General Meeting on 27 May 2018 ('27 May 2018 AGM'). At this 27 May 2018 AGM, one Joseph a/l Sinnaveeriah had tabled the following motion which was proposed by one Selvi a/p Raman and supported by one Mohanan a/l K Rajoo and which was

unanimously carried:

> In accordance to Article 24.2 and Article 24.4 myPPP Constitution, the names of ceased members as per Article 30.3 namely Datuk Mohan Kandasamy and Datuk Seri Maglin Dennis D'Cruz be dismissed and removed from the company Bintang Iradat (M) Sdn Bhd as per Supreme Council decision taken on 25 May 2018 Bil 05/2018 as Directors and Shareholders holding on trust for the Party on behalf of the beneficial owner Tan Sri Datuk Seri M Kayveas and transferred accordingly back to him to avoid future legal tussle by members who do not understand the meaning of trust.

[35] DSM's camp in turn organised an AGM on 26 May 2018. But nothing turn on this AGM.

[36] The Registrar of Society ('ROS') rejected the AGM Minutes of both camps based on the fact that there was a leadership tussle within myPPP.

[37] The ROS issued a letter dated 13 September 2018 to the Party stating, inter alia, that the Party had failed to resolve disputes relating to the expulsion and the resignation of TSK as well as the issues relating to the legitimate office bearers of the Party. In the same letter, ROS directed that the matter be resolved failing which, myPPP would have its registration cancelled.

[38] Datuk Mohan a/l Kandasamy ('sixth plaintiff'), in his capacity as Secretary General, circulated the ROS's letter dated 13 September 2018 to all Supreme Council members. A meeting was held on 30 September 2018, to determine:

(a) whether the resignation issued by TSK dated 23 April 2018 was valid;

(b) whether the termination of TSK dated 24 April 2018 was valid; and

(c) whether the actual office bearers of myPPP was as per a list annexed to his letter.

[39] TSK did not attend the meeting on 30 September 2018. But, 23 Supreme Council members had attended the meeting on 30 September 2018 and had unanimously agreed to the motions.

[40] Datuk Mohan, in his capacity as Secretary General wrote to the ROS on 5 October 2018 to inform it of the outcome.

[41] Notwithstanding the aforesaid, the ROS issued further letters dated 14 November 2018 and 13 December 2018. The ROS maintained that the

leadership dispute within myPPP was still not resolved and reiterated that failure to resolve the dispute would result in the Party having its registration cancelled.

SUIT NO WA-22NCVC-796–11 OF 2018

[42] Whilst the leadership dispute continues, without the plaintiffs' knowledge, a Civil Suit No WA-22NCVC-796–11 of 2018 ('Suit 796') was filed in the Kuala Lumpur High Court on 29 November 2018.

[43] The plaintiff in Suit 796 was Datuk Chandrakumanan ('the fourth defendant'). He brought the suit, purportedly acting in his capacity as the Vice President of myPPP.

[44] The defendant in Suit 796 was Datuk Ly Kim Cheong ('the fifth defendant'). He was sued in his capacity as the Secretary General of myPPP. Hence, Suit 796 is between the fourth defendant and the fifth defendant.

[45] Both Datuk Chandrakumanan and Dato' Ly were part of TSK's camp and had attended the 25 May 2018 Supreme Council Meeting.

[46] Based on the statement of claim filed in Suit 796, Datuk Chandrakumanan alleged that at the 25 May 2018 Supreme Council Meeting, a motion had been passed to remove Datuk Mohan ('sixth plaintiff') and Datuk Seri Maglin ('first plaintiff') as directors and shareholders in Bintang Iradat (M) Sdn Bhd. They were to be replaced by Kumara Raja ('eighth defendant') and Shanker ('seventh defendant') respectively.

[47] The statement of claim further alleged, at para 12, that Dato' Ly had failed to take the necessary actions to replace the directors and shareholders of Bintang Iradat.

[48] Upon being served with the writ and statement of claim, Dato' Ly realised there were some amendments need to be done to the statement of claim. He then instructed Dato' Chandrakumanan ('the plaintiff') to make the amendments. In this regard, we entirely agree with the plaintiffs' submission that probably this is the first time in history that the defendant advice and instruct the plaintiff to amend his pleading.The two amendments made are as follows:

(a) that purportedly, the Supreme Council of myPPP decided on 29 June 2013 that the trustees of the Bintang Iradat shares be transferred back to the original purchasers and shareholders in Bintang Iradat; and

(b) a further prayer was added to the civil suit, wherein Vijayan was purportedly re-appointed as the company secretary of Bintang Iradat and that he would be empowered to prepare all transfer documents with immediate effect.

[49] For the aforesaid reasons, Datuk Chandrakumanan sought the following prayers against Dato' Ly:

13. Oleh yang demikian plaintif memohon untuk perintah-perintah berikut:

(i) Bahawa defendan mengambil langkah-langkah untuk memindah milik saham-saham Bintang Iradat (M) Sdn Bhd seperti berikut:

Daripada	Kepada	Jumlah Saham
Maglin a/l Dennis D'Cruz	Shanker Kandasamy	70,000
Mohan a/l A Kandasamy	Kumara Rajah a/l Arumugam	15,000

(ii) Bahawa defendan mengambil langkah-langkah untuk menggantikan pengarah-pengarah syarikat Bintang Iradat (M) Sdn Bhd seperti berikut:

Pengarah Lama	Pengarah Baru
Mohan a/l A Kandasamy	Kumara Rajah a/l Arumugam
Maglin a/l Dennis D'Cruz	Shanker a/l Kandasamy

(iii) Sekiranya defendan gagal, enggan atau cuai menandatangani sebarang borang pindahmilik atau resolusi syarikat, maka Pendaftar Mahkamah Tinggi dan/atau plaintif diberikuasa untuk menandatangani borang-borang tersebut.

(iv) Apa-apa perintah lain yang Mahkamah Mulia ini fikirkan adil dan wajar.

[50] For the record, Shanker is TSK's nephew. Kumara Rajah is TSK's driver and Vijayan is the company secretary of Kayveas Holdings Sdn Bhd.

[51] It is not disputed that despite the orders being sought against Datuk Mohan, Datuk Seri Maglin and Bintang Iradat (M) Sdn Bhd, neither were they made parties thereto nor were they served with the cause papers.

CANCELLATION OF myPPP

[52] As Suit 796 was surreptitiously proceeding, myPPP had its registration cancelled on 14 January 2019. This fact is not disputed.

CONSENT JUDGMENT DATED 16 JANUARY 2019

[53] It is extremely relevant to state briefly on how the consent judgment came about. It happened in this manner. On 15 January 2019, Mr Lee Jun How ('SP6'), the legal assistant from Messrs Jaafar Menon, solicitors for Datuk

A Chandrakumanan attended at the Kuala Lumpur High Court for the Suit 796. This was one day after myPPP had its registration cancelled. Dato' Ly was also present.

B **[54]** They appeared before Justice Darryl Goon (now JCA) and sought to record a consent judgment. From the notes of proceedings made available at the trial of the present action, Justice Darryl Goon informed parties that the court could not make the consent order requested as the company, Bintang Iradat (M) Sdn Bhd was not a party to the suit.

C **[55]** After the attendance before Justice Darryl Goon, on the same day ie 15 January 2019 at around 2.22pm, Dato' Ly filed a memorandum of appearance dated 15 January 2019 in Suit 796.

D **[56]** The next day, on 16 January 2019, both Mr Lee Jun How and Dato' Ly attended before Justice Darryl Goon again. They proceeded to record a consent judgment.

E **[57]** It is not disputed that on both occasions when they appeared before Justice Darryl Goon on 15 January 2019 and 16 January 2019, Justice Goon was not informed of the fact that myPPP had had its registration cancelled on 14 January 2019 by either Mr Lee Jun How or Dato' Ly.

F THE TERMS OF THE CONSENT JUDGMENT

[58] From the wording in the consent judgment, Dato' Ly purportedly consented to the following:

G (a) 70,000 shares held by Datuk Seri Maglin would be transferred to Shanker;

(b) 15,000 shares held by Datuk Mohan would be transferred to Kumara Rajah;

H (c) that Dato' Ly would purportedly be required to take all necessary steps to transfer the shareholding and replace the Board of Directors of Bintang Iradat;

(d) that Dato' Ly would be required to replace the directors of Bintang Iradat by having Datuk Seri Maglin replaced by Shanker and Dato' Mohan replaced by Kumara Rajah;

I (e) that the trusteeship would purportedly be transferred back to the original buyer and beneficial owner; and

(f) that the company secretary of Bintang Iradat would be changed to Vijayan, who would be required to handle the transfer documentation with immediate effect.

USE OF THE CONSENT JUDGMENT

[59] The consent judgment was relied upon to make 100% changes to the shareholdings, directorship and company secretary of Bintang Iradat.

[60] Prior to the consent judgment, the shareholdings and directorial structure of Bintang Iradat were as follows:

Directors/Officers	
Datuk Maglin a/l Dennis D'Cruz	Director
Datuk Mohan a/l A Kandasamy	Director
Lim Wai Yee	Secretary
Share Holder	
Datuk Maglin a/l Dennis D'Cruz	70,000 shares
Datuk Mohan a/l A Kandasamy	15,000 shares
Datuk Lau Beng Wei	15,000 shares

[61] The consent judgment was utilised to change the structure of Bintang Iradat to ultimately reflect TSK and Kayveas Holdings Sdn Bhd, respectively as the sole director and shareholder of Bintang Iradat as follows:

Directors/Officers	
Tan Sri Datuk Seri M.Kayveas	Director
Vijayan a/l Singaram	Secretary
Share Holder	
Kayveas Holdings Sdn Bhd	100,000 shares

[62] Kayveas Holdings Sdn Bhd is a company controlled by TSK. He holds 999,999 shares in the said company, which has a capital of RM1m. The only other director and shareholder in Kayveas Holdings Sdn Bhd is Madam Kaliamah a/p Vadiveloo, who is TSK's mother. She is 86 years old and holds the balance one share.

[63] The business address of Bintang Iradat was subsequently changed and on 8 February 2019, the name Wisma myPPP was changed to 'Wisma Tan Sri Kayveas'.

[64] On 12 February 2019, the nature of business of Bintang Iradat was changed to include the '... buying, selling or otherwise deal in any real estate/assets in such manner as may deem expedient'.

[65] With the 100% changes made to the structure of Bintang Iradat, Wisma myPPP and Bintang Iradat is now under the full control of TSK.

[66] When the plaintiffs discovered about the transfer of the shares and the changes made to the directorship in Bintang Iradat, both Datuk Seri Maglin and Datuk Mohan have filed applications to enter caveats over the lands where Wisma myPPP is situated. Both applications were rejected by the land office. No reason was given. Police reports and CCM reports were also lodged by Datuk Seri Maglin and Datuk Mohan.

PRESENT SUIT

[67] On 14 June 2019, the plaintiffs commenced this action and applied for and obtained an injunctive order ex parte on 21 June 2019 to refrain any dealings with Wisma myPPP and the shares of Bintang Iradat. The ex parte order was converted into an ad interim order by consent on 5 July 2019 and finally conceded by the defendants on 10 August 2020.

[68] Despite the injunctive orders, at the trial of this suit, it was disclosed that TSK had attempted to sell Wisma myPPP.

[69] It is the plaintiffs' pleaded case that the defendants (except the third and the tenth defendant) by their conduct in unlawfully transferring all the shares in Bintang Iradat as well as Wisma myPPP to TSK and Kayveas Holdings had conspired by unlawful means to cause harm and losses to the plaintiffs. Particulars of conspiracy to injure by unlawful means is pleaded in para 89 of the statement of claim. Particulars of abuse of court process is pleaded in para 91 of the statement of claim.

RELIEFS SOUGHT BY THE PLAINTIFFS

[70] Under para 93 of the statement of claim, the plaintiffs prayed for the following reliefs:

(a) a declaration that the consent judgment dated 16 January 2019 as recorded in Civil Suit No WA-22 NCVC-796–11 of 2018 be set aside and be of no effect;

(b) an order that the Registrar of Companies is to rectify the Register of Bintang Iradat (M) Sdn Bhd to reflect as follows:

(i) Datuk Seri Maglin Dennis D'Cruz holds 70,000 shares in Bintang

Iradat (M) Sdn Bhd and is a director of Bintang Iradat (M) Sdn Bhd;

(ii) Datuk Mohan a/l A Kandasamy holds 15,000 shares in Bintang Iradat (M) Sdn Bhd and is a director of Bintang Iradat (M) Sdn Bhd; and

(iii) Datuk Lau Beng Wei holds 15,000 shares in Bintang Iradat (M) Sdn Bhd.

(c) an order that a permanent injunction be granted to prohibit the first, second, fourth, fifth, sixth, seventh, eighth and/or ninth defendants and/or their agents, servants and/or representatives from transferring and/or disposing any of the shares in Bintang Iradat (M) Sdn Bhd in any manner whatsoever;

(d) an order that a permanent injunction be granted to restrain the defendants (except the third and tenth defendants) from disposing Wisma myPPP;

(e) an injunction be granted to cause the defendants (except the third and tenth defendants) to rename Wisma TSK to 'Wisma myPPP';

(f) a declaration that Bintang Iradat (M) Sdn Bhd is the property of myPPP and shall vest in the Director General of Insolvency following from the de-registration of myPPP on 14 January 2019;

(g) a declaration that all 100,000 shares in Bintang Iradat (M) Sdn Bhd are the property of myPPP and shall vest in the Director General of Insolvency following from the de-registration of myPPP on 14 January 2019;

(h) a declaration that Wisma myPPP is the property of myPPP and is vested in the Director General of Insolvency following from the de-registration of myPPP on 14 January 2019;

(i) a mandatory injunction be granted against the defendants (except the third and tenth defendants) to vacate and grant vacant possession of Wisma myPPP to the Director General of Insolvency;

(j) a declaration that the defendants (except the third and tenth defendants) have unlawfully conspired to cause loss, harm and damage to the plaintiffs;

(k) an order for damages, exemplary damages and aggravated damages made payable by the defendants (except the third and the tenth defendants) jointly and severally to the plaintiffs; and

(l) interests and costs.

THE DEFENDANTS' DEFENCE

[71] The first to eighth defendants denied any conspiracy as alleged by the plaintiffs. Instead, their defence is the decision to transfer back the shares and Wisma myPPP to the actual owner, that is TSK, was a decision made and agreed by members of myPPP on 25 May 2018 and 27 May 2018.

[72] Datuk Lau ('the ninth defendant') filed a separate defence. He denies he is one of the conspirators as alleged by the plaintiffs. He averred that he had signed a blank share transfer form without any knowledge of Suit 796 or the consent judgment dated 16 January 2019. He claims that he signed the blank share transfer form even before Suit 796 commenced and the consent judgment dated 16 January 2019 was entered.

ISSUES FOR HIGH COURT DETERMINATION

[73] The three main issues before the High Court are as follows:

(a) whether the consent judgment taken on 16 January 2019, two days after myPPP was cancelled was without authority and jurisdiction;

(b) whether the recording of the consent judgment dated 16 January 2019 was an abuse of the court process; and

(c) did the first to ninth defendants act in concert, pursuant to unlawful means conspiracy, to cause the removal of all the shares in Bintang Iradat and to thereafter have the same ultimately transferred to Kayveas Holdings Sdn Bhd.

THE DECISION OF THE HIGH COURT

[74] In allowing the plaintiffs' claim in prayers 93(a), (c), (d), (g), (h) and (i) of the statement of claim, the learned High Court judge relied on the following findings of facts:

(a) the consent judgment must be set aside as it was obtained without disclosure to the court that myPPP had been de-registered by the ROS on 14 January 2019. The consent judgment is a fraud on the court and is unlawfully procured;

(b) the conspiracy was carried out through the unlawful use of the court process via the filing of Suit 796 and the procuring of the consent judgment to legitimise the taking of the shares of Bintang Iradat and Wisma myPPP from the Party into the hands of TSK;

(c) the individuals involved in the filing of Suit 796 and the procuring of the consent judgment were TSK ('first defendant'), Datuk

Chandrakumanan ('the fourth defendant') and Dato' Ly ('the fifth defendant'). They were the conspirators who had caused harm and losses to the plaintiffs;

(d) for their egregious, approbrious and contemptuous conduct in the manner in which the process of the court was being abused to achieve an unlawful end of misappropriating property belonging to the Party, TSK ('first defendant'), Datuk Chandrakumanan ('fourth defendant') and Dato' Ly ('fifth defendant') were ordered to pay RM150,000 exemplary damages each to the Director General of Insolvency;

(e) the first, fourth and fifth defendants were also ordered to pay costs of RM300,000 jointly and severally to the plaintiffs; and

(f) the plaintiffs have failed to prove their case against the sixth, seventh, eighth and ninth defendants. The plaintiffs' claim against these defendants are dismissed with costs of RM35,000 to the sixth, seventh and eighth defendants collectively and costs of RM35,000 to Datuk Lau ('ninth defendant') personally.

APPEAL 621

[75] The main issue raised by the defendants ('appellants') is that the High Court had no jurisdiction to hear, decide and grant the various reliefs in Suit WA-22-NCC-326–06 of 2019 on 30 March 2022 pursuant to s 18C of the Societies Act 1966.

[76] Section 18C of the Societies Act 1966 provides as follows:

> Decision of political party to be final and conclusive 18C. The decision of a political party or any person authorized by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

[77] In support of the argument, learned counsel for the defendants relied on the following cases:

(a) *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94;

(b) *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16; [2013] 2 CLJ 362; and

(c) *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ

A 449; [2003] 3 CLJ 404.

OUR DECISION

B **[78]** With respect to the learned counsel for the defendants, we find s 18C and the cases cited by him are not applicable because the facts and issues in the present case are different from the cited cases. The defendants herein were relying on the minutes of the AGM purportedly held by TSK's camp on 27 May 2018. In the 27 May 2018 AGM, the defendants alleged that members of myPPP have made a decision to transfer the shares in Bintang Iradat and C Wisma myPPP to TSK to avoid future legal dispute. This is the decision the defendants alleged to be the purported decision of members of myPPP which cannot be questioned by the court under s 18C.

D **[79]** But, what learned counsel for the defendants did not bring to our attention is there was no evidence that the ROS recognised the 27 May 2018 AGM as valid. Instead, the learned High Court judge found as a fact that the minute of 27 May 2018 AGM was rejected by the ROS. It is impossible for the ROS to recognise the 27 May 2018 AGM because of the leadership tussle and E who were the actual office bearers of myPPP were never resolved. These are the reasons myPPP was de-registered. This being the case, it means, the purported decision made by members of myPPP on 27 May 2018 is not a valid decision enforceable in law. Simply put, there is no decision recognised in law to be questioned by the court. Hence, s 18C does not apply. Therefore, it is F fundamentally wrong for the defendants to still harping on the 27 May 2018 AGM as the basis to invoke s 18C. On this ground alone, the defendants' appeal must fail.

[80] For the sake of completeness, we will proceed to show that there is G absolutely no merit whatsoever in this appeal.

[81] The jurisdictional issue of the court have been raised by the defendants during the trial at the High Court. This point was considered and ventilated by the High Court judge at paras 158, 159, 162, 164 and 166 of his judgment. H This is what His Lordship said:

> [158] Learned counsel for the first to eighth defendants raised the following legal issues in respect of the plaintiffs' claims, namely:
>
> (a) whether this court has the jurisdiction to determine the merits of any disputes between members of a political party; I
>
> (b) whether the plaintiffs have locus standi to initiate and maintain the present suit;
>
> (c) whether Datuk Chandrakumanan ('the fourth defendant') had locus standi to initiate Suit 796; and

(d) whether the shares of Bintang Iradat and the property, Wisma myPPP are properties of myPPP.

[159] With respect to learned counsel for the first to eighth defendants, all the above legal issues have already been finally determined by the court in the striking out applications, the KL JR Suit, the Alor Setar OS, the Seremban OS and the Federal Court in the Civil Appeal No 02–10–2012(W).

[162] Similarly, the issue relating to the status of Datuk Chandrakumanan has been conclusively and finally determined by the High Court in the KL JR Suit when the learned judge thereto dismissed the KL JR Suit in its entirety and no appeal was filed against the decision.

[164] As regards the ownership of the shares of Bintang Iradat and the property, Wisma myPPP, this has been determined by the Federal Court in the Civil Appeal No 02–10–2012 (W).

[166] Hence, the legal issues raised by the first to eighth defendants are no longer tenable being caught by the doctrine of res judicata.

[82] We fully agree with the learned High Court judge's finding and reasoning. His Lordship's decision on the issue of jurisdiction of the court, the plaintiffs' locus standi and ownership of the shares and Wisma myPPP was absolutely correct.

[83] With regard to the issue of jurisdiction of the court, we wish to add that once illegality is proven, the High Court has an inherent power to declare an illegal order as void and have it set aside. An example of an illegal order is an order made in breach of written law or an order made without jurisdiction. See *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393.

[84] In the present case, the plaintiffs have alleged that the consent judgment dated 16 January 2019 is illegal, lack of jurisdiction and is a breach of natural justice for the following reasons:

(a) Datuk Chandrakumanan had no locus standi to bring Suit 796 because he is not a member of myPPP. His membership in myPPP was terminated in 2015. This fact is admitted by Datuk Chandrakumanan;

(b) both Dato' Chandrakumanan and Dato' Ly had no authority to act as the Vice President and Secretary General of myPPP respectively when they knew the actual office bearers of myPPP was in dispute;

(c) both Dato' Chandrakumanan and Dato' Ly had no authority to act as the representatives of myPPP as myPPP was no longer in existence when the consent judgment was recorded on 16 January 2019 and they both knew about it;

(d) they knew the consent judgment was entered without disclosing to the court that myPPP was de-registered on 14 January 2019. This is a fraud on the court;

(e) the consent judgment adversely affected Datuk Seri Maglin, Datuk Mohan and Bintang Iradat. But, they were not made arties to the Suit 796. Their right to be heard were denied. This is a breach of natural justice; and

(f) s 17(1)(a) of the Societies Act 1966 provides that upon the cancellation of the registration of a registered society, the property of the society shall forthwith vest with the Director General of Insolvency or any other officer appointed by the Minister for the purpose of winding up the affairs of the society. It means, the property of myPPP is vested with the Director General of Insolvency (not with the defendants) after the Party's cancellation. The consent judgment is in breach of s 17(1)(a) of the Societies Act 1966.

[85] We find the learned High Court judge had rightly decided that illegality was proven and held the consent judgment was illegal, unlawful, fraud on the court and must be set aside. We fully agree with him.

[86] With regard to the tort of conspiracy to injure by unlawful means, we find the learned High Court judge had correctly applied the law. The plaintiffs are required to prove the four elements of this tort as follows:

(a) an agreement between two or more persons;

(b) an agreement for the purpose of injuring;

(c) that acts done in execution of the agreement resulted in damage to the plaintiffs; and

(d) damage.

[87] For unlawful means of conspiracy, it is necessary to establish an intention to injure the claimant (*Kuwait Oil Tanker Co SAK and another v Al Bader and others* [2000] 2 All ER (Comm) 271.

[88] It is trite law that court can infer fraud and conspiracy from surrounding circumstances and conduct of the defendants (*Kwan Ngen Wah & Ors v Hiew Kon Fah & Ors and other appeals* [2019] MLJU 226).

[89] Having heard, seen and evaluated the evidence of the witnesses, the learned High Court judge correctly found that there was an oral agreement between the first, fourth and fifth defendants to cause harm and damage to the plaintiffs. It was also found that the agreement must have happen at the

purported 27 May 2018 AGM. TSK himself was a lawyer. The agreement was executed with the filing of Suit 796 and the procuring of the consent judgment. This is followed by the transfer of shares in Bintang Iradat and Wisma myPPP to TSK and Kayveas Holdings Sdn Bhd. It is crystal clear that the act and conducts of the first, fourth and fifth defendants had caused losses and damage to the plaintiffs in that the shares and Wisma myPPP which belongs to the political party had been taken away unlawfully by TSK. We see no good reason to disturb the finding of fact made by the learned High Court judge that the first, fourth and fifth defendants are the conspirators.

[90] With regard to the tort of abuse of court process, the learned High Court judge relied on the case of *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637; [1999] 4 CLJ 533. In that case, Gopal Sri Ram JCA explained:

> It is trite that a person who has a legitimate grievance may invoke the court's process to obtain redress. But cases may arise where the true purpose for invoking the court's process is something other than to obtain a remedy provided by law. It may be to oppress a defendant. Or it may be to apply pressure upon him which the law regards as illegitimate. Or it may be to merely commence an action and let it hang over the head of the defendant. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends on particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out ...

[91] Given the facts and circumstances of Suit 796, it is clear that the said suit and the procurement of the consent judgment was for the purpose of causing harm and losses to myPPP. Suit 796 was an abuse of the court process as it was used to legitimise the unlawful transfer of shares and Wisma myPPP which belongs to the party. Since it was proven that Suit 796 and the consent judgment obtained therein is an abuse of court process, the learned High Court judge was right in setting aside the consent judgment on this ground as well.

[92] For the aforesaid reasons, we find no merit in this appeal. The appeal is therefore dismissed with costs of RM30,000 to the respondents subject to allocator. The order of the High Court is affirmed.

APPEAL 773

[93] The plaintiffs ('appellants') submit that the learned High Court judge erred in dismissing the plaintiffs' claim against Vijayan ('sixth defendant'), Shanker ('seventh defendant'), Kumara Raja ('eighth defendant') and Datuk Lau ('ninth defendant').

[94] The plaintiffs submit that the shares in Bintang Iradat could not have been ultimately lodged with TSK but for the assistance of the sixth, seventh, eighth and ninth defendants.

[95] It is further submitted that there is no need for the sixth, seventh, eighth and ninth defendants to join in or participate in the filing of Suit 796 and procuring the consent judgment. It is sufficient that each of them had consented to lend their respective names to the consent judgment and thereafter to play their parts in reliance on the consent judgment to ultimately vest the shares of Bintang Iradat in Kayveas Holdings Sdn Bhd.

OUR DECISION

[96] With regard to the role of the sixth to the ninth defendants in the transfer of shares and change of directorship in Bintang Iradat to TSK, the learned High Court judge found as a fact that:

(a) although sixth, seventh, eighth and ninth defendants attended the 27 May 2018 AGM and supported the motion to transfer the shares and change of directorship in Bintang Iradat to TSK, this per se without more cannot be equated to participation in the unlawful means of conspiracy;

(b) none of them was aware that an action would be commenced by the fourth defendant against the fifth defendant to enforce the resolution that was passed at the 27 May 2018 AGM;

(c) there was no evidence that the sixth to the eighth defendants were aware of Suit 796. None of them were involved in procuring the consent judgment although the sixth to eighth defendants were named in the consent judgment;

(d) the sixth defendant merely agreed to be re-appointed as company secretary of Bintang Iradat;

(e) the seventh and eighth defendants merely consented to act as the transferee of shares of Bintang Iradat to be transferred by Datuk Seri Maglin and Datuk Mohan; and

(f) the ninth defendant merely executed the share transfer form and this fact alone cannot be a sufficient reason to infer Datuk Lau was a party to the agreement to procure the consent judgment.

[97] Based on the above finding of facts, the learned High Court judge concluded that:

> The plaintiffs have not been able to show on the balance of probabilities that the sixth, seventh, eighth and ninth defendants were parties to the conspiracy by TSK,

fourth and fifth defendants to deprive the party from the shares of Bintang Iradat and the property, Wisma myPPP vide the filing of Suit 796 and the consent judgment. Indeed, there is nothing to suggest that they were aware that Suit 796 was contrived and the consent judgment was unlawful. All that they had done was to take steps to comply with the terms of the consent judgment and to follow the instructions given to them for that purpose. The element of common intention has not been adequately proven.

[98] Thus, it is obvious to us that the decision of the learned High Court judge to dismiss the plaintiffs' claim against the sixth, seventh, eighth and ninth defendants was on the basis that there was a lack of evidence against them to establish the causes of action.

[99] Having considered the submissions of learned counsel for the plaintiffs, we are of the view that the findings of the learned High Court judge in this respect are not plainly wrong for us to intervene. These are essentially findings of fact and we do not find any reason to interfere with these findings. Therefore, we dismissed the appeal with one set of costs of RM10,000 to the first, second and third respondents and one set of costs of RM10,000 to the fourth respondent subject to allocator.

Appeals dismissed.

Reported by Nabilah Syahida Abdullah Salleh